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January 21, 2021

To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: Karen S. Straughn
Consumer Protection Division

Re: House Bill 5 – Cemeteries – Perpetual Care – Distribution from Perpetual Care Trust Fund (OPPOSE) -

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in opposition to House Bill 5 submitted by Delegate Susan W Krebs. This bill allows a cemetery to use funds from the principal, as well as the interest, of a perpetual care trust fund, to administer, supervise and embellish the cemetery, as well as to maintain the cemetery grounds, roads, and paths and repair and renew the buildings, including columbaria and mausoleums and the property of the cemetery. The Division is aware of recent situations in which cemeteries have been left with inadequate funding to properly maintain and operate the cemetery and is concerned that House Bill 5 will only serve to exacerbate the situation by allowing the principal of the trust fund to be diminished.

The main purpose of a perpetual care trust fund is to provide a funding source for long-term maintenance of the cemetery. By permitting a cemetery to use the interest from the trust fund, there is a steady stream of funds to provide such maintenance. However, current law does not permit incursions into the corpus of the perpetual trust fund. The goal is to match the perpetual care income stream with the cost of cemetery maintenance in perpetuity. By permitting a cemetery to use the corpus of the trust fund, there will be no assurances that there will be sufficient funds to maintain the cemetery in perpetuity and nothing to prevent a cemetery from having inadequate funds in the future. Even though cemeteries are required to submit accounting reports to the Office of Cemetery Oversight, the Division is concerned that the Office may not have adequate resources or expertise to recognize when a cemetery is facing financial stress.

For these reasons, we ask that the Health and Government Operations Committee return an unfavorable report on this bill.

cc: The Honorable Susan W. Krebs
Members, Health and Government Operations Committee